

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

September 21, 2006
B-175

Nos. 06-8017 & 06-3210

DANNY LEE MITCHELL

v.

AXCAN SCANDIPHARM, a corporation;

WOMENS LAW PROJECT;

LAMBDA LEGAL DEFENSE & EDUCATION FUND, INC.

Axcan Scandipharm, Inc.,

Appellant/Petitioner

(WD/PA Civil No. 05-cv-00243)

Present: RENDELL, AMBRO and ROTH, Circuit Judges

1. Clerk's Submission for Possible Dismissal of Appeal due to a Jurisdictional Defect.
2. Response by Axcan Scandipharm, Inc. to Clerk's Letter for Possible Dismissal, With Memorandum In Support.
3. Response by Danny L. Mitchell to Clerk's Letter for Possible Dismissal.
4. Supplement by Axcan Scandipharm, Inc. In Support of Response For Possible Dismissal.

Charlene Crisden

Case Manager 267-299-4923

O R D E R

Because the District Court has denied certification of this appeal as involving "a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation" pursuant to 28 U.S.C. §1292(b), this Court lacks jurisdiction to allow a discretionary appeal. Accordingly, the petition for permission to appeal docketed at No. 06-8017 is hereby denied. Furthermore, as the District Court's Order of February 21, 2006 is not immediately appealable, the appeal docketed at No. 06-3210 is also dismissed.

By the Court,

/s/ Marjorie O. Rendell
Circuit Judge

Dated: November 22, 2006

CLC\cc: John G. Burt, Esq.

Susan Frietsche, Esq.

Philip R. Voluck, Esq.

Michael V. DeSantis, Esq.

Cole Thaler, Esq.



Marcia M. Waldron
Marcia M. Waldron, Clerk